IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA ANNE PULLARO,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 02-160
ANTHONY G. RICCIARDI, JR., HELEN M. RICCIARDI, h/w, and JAMES RICCIARDI,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. OCTOBER 10, 2002

Presently pending before this Court is the Motion for Partial Summary Judgment filed by the Defendants, Anthony G. Ricciardi, Jr. ("Anthony"), Helen M. Ricciardi ("Helen"), and James Ricciardi ("James"). In the Motion, the Defendants seek the dismissal of Count III of the Plaintiff Lisa Anne Pullaro's ("Lisa") Complaint regarding punitive damages. For the reasons that follow, the Defendants' Motion is granted.

I. BACKGROUND

Lisa alleges that on January 14, 2000, she went over to the Defendants' house with a family friend. After Lisa entered the house, the Defendants' dog, Mako, approached Lisa wagging its tail. However, when Lisa bent over to pet Mako, Mako bit Lisa on the lip, severing her lip. Lisa filed the present Complaint on January 11, 2002 alleging negligence in Count I, strict liability in Count II, and punitive damages in Count III.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

"Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Burke v. Maassen, 904 F.2d 178, 181 (3d Cir. 1990)(citing Martin v. Johns-Manville Corp., 494 A.2d 1088, 1096 (Pa. 1985))(internal quotations omitted). Here, there is no allegation that the Defendants' motives were evil. Therefore, Lisa must establish that the Defendants were recklessly indifferent to her rights. "Pennsylvania cases have adopted a very strict interpretation of 'reckless indifference to the rights of others.'" Id. The Pennsylvania Supreme Court last visited the issue of "reckless indifference" in Martin, 494 A.2d 1088. Moreover, the Third Circuit in Burke

predicted that the Pennsylvania Supreme Court would adopt the standard set forth in the Martin plurality opinion on this issue. Burke, 904 F.2d at 183.

The plurality opinion in Martin established that punitive damages are only available when the defendant knows, or has reason to know, of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act in conscious disregard of, or indifference to, that risk. Id. (citing Martin, 494 A.2d at 1097). According to the court in Barnes, it is not enough for the plaintiff to show that a reasonable person in the defendant's position would have realized or appreciated the high degree of risk from his actions. Instead, the plaintiff must produce some evidence that the person actually realized the risk and acted in conscious disregard or indifference to it. Id. at 181-82.

In this case, James, Anthony's and Helen's son, testified that Mako was a well mannered "lap dog" and that the veterinarian did not bother to restrain Mako during visits. James' brother, Anthony Ricciardi III ("Anthony III"), testified that Mako never acted aggressively towards anyone, that he enjoyed playing with children, and that Mako never growled or barked at anyone who was playing with him. According to Helen, everyone was shocked by the news that Mako had bitten Lisa. Helen further testified that Mako had never bitten anyone before and that she had allowed Mako to freely roam the house with her three year-old and six month-old grandchildren as well as her daughter's five year-old godson in the house.

There is a factual dispute, however, regarding a previous bite. Lisa testified that while she was at the hospital the night that she was bitten, she was told by both James and Anthony that Mako had bitten Anthony III on the hand a few days earlier. Lisa's mother, Karen Curcio, also testified that Anthony told her at the hospital that Mako had previously bitten

Anthony III. However, during their depositions, both Anthony and James denied stating that Mako had bitten Anthony III. Anthony III also testified that Mako had never bitten him. For the purposes of this Motion, we will assume that Mako did bite Anthony III. There is no indication, however, how serious or trivial this bite might have been as there are no medical records or testimony regarding the severity of the bite.

Lisa argues that the Defendants knew that Mako was dangerous because he had previously bitten Anthony III and because of the contents of Mako's veterinarian record. Lisa further alleges that based on these two facts, Mako should have been confined or muzzled and that the Defendants' failure to do so resulted in their conscious disregard of a known risk. The veterinarian record in question relates to a visit to the veterinarian after Mako had pinched a nerve in his back, four days before Lisa was bitten. The veterinarian record states:

1-10-00	Back pain	3 vtecs
	not easy to examine fully	
	100 mg Rimadyl	

(Pl's Resp. Summ. J., Ex. D). Lisa argues that this record indicates that because of Mako's pain, three "vtecs" were necessary to hold him down. Apparently, Lisa is alleging that this record somehow shows that the Defendants were aware, or should have been aware, of Mako's violent nature. Lisa's analysis of this record is based on pure speculation and thus it is insufficient to combat summary judgment. Williams v. Borough of W. Chester, 891 F.2d 458, 460. Furthermore, according to the Defendants, the veterinarian told them that Lisa's interpretation of the note was incorrect.

In this case, Lisa has failed to present facts that would establish that the Defendants knew, or had reason to know, of facts which created a high degree of risk of physical

harm to her, and deliberately proceeded to act in conscious disregard of, or indifference to, that risk. The only actual evidence proffered to support Lisa's claim is her and her mother's testimony that the Defendants stated that Mako had bitten Anthony III prior to her accident. The evidence of this one prior bite is insufficient to establish that the Defendants consciously disregarded a known risk. In Widom v. Kauffman, Kauffman's dog bit Widom. Widom v. Kauffman, 46 Pa. D. & C.3d 489, 490 (Pa. Com. Pl. 1986). The court dismissed Widom's claim for punitive damages after finding that the mere knowledge of the viciousness or dangerous propensities of a dog would not support a claim for punitive damages. Id. at 492. Knowledge of a previous bite is not enough to establish a conscious disregard of a known risk. Lisa has not established that the Defendants were recklessly indifferent to her rights. Therefore, Lisa's claim for punitive damages must be dismissed.

An appropriate Order follows.

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ORDER

AND NOW, this 10th day of October, 2002, upon consideration of the Defendants' Motion for Partial Summary Judgment (Dkt. No. 7), and any Responses and Replies thereto, it is hereby ORDERED that the Motion is GRANTED and Count III of the Plaintiff's Complaint (Punitive Damages) is DISMISSED with prejudice.

BY THE COURT:

Robert F. Kelly, Sr. J